Assembly Bill No. 1340

Passed the Assembly August 27, 2014

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Chief Clerk of the Assembly

Passed the Senate August 21, 2014

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Secretary of the Senate

This bill was received by the Governor this _____ day of _____, 2014, at _____ o'clock ___M.

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Private Secretary of the Governor

CHAPTER _____

An act to add and repeal Section 1265.9 of, the Health and Safety Code, and to amend Sections 4100 and 7200 of, and to add Sections 4143, 4144, and 4145 to, the Welfare and Institutions Code, relating to mental health.

LEGISLATIVE COUNSEL'S DIGEST

AB 1340, Achadjian. Enhanced treatment programs.

Existing law establishes state hospitals for the care, treatment, and education of mentally disordered persons. These hospitals are under the jurisdiction of the State Department of State Hospitals, which is authorized by existing law to adopt regulations regarding the conduct and management of these facilities. Existing law requires each state hospital to develop an incident reporting procedure that can be used to, at a minimum, develop reports of patient assaults on employees and assist the hospital in identifying risks of patient assaults on employees. Existing law provides for the licensure and regulation of health facilities, including acute psychiatric hospitals, by the State Department of Public Health. A violation of these provisions is a crime.

This bill would, commencing July 1, 2015, and subject to available funding, authorize the State Department of State Hospitals to establish and maintain pilot enhanced treatment programs (ETPs), as defined, for the treatment of patients who are at high risk of most dangerous behavior, as defined, and when safe treatment is not possible in a standard treatment environment. The bill would authorize the State Department of Public Health to approve, on or after July 1, 2015, an ETP, which meets specified requirements and regulations, as a supplemental service for an acute psychiatric hospital that submits a completed application and is operated by the State Department of State Hospitals.

The bill would authorize a state hospital psychiatrist or psychologist to refer a patient to an ETP for temporary placement and risk assessment upon a determination that the patient may be at high risk for most dangerous behavior. The bill would require the forensic needs assessment panel (FNAP) to conduct a placement evaluation to determine whether the patient clinically

requires ETP placement and ETP treatment can meet the identified needs of the patient. The bill would also require a forensic needs assessment team (FNAT) psychologist to perform an in-depth violence risk assessment and make a treatment plan upon the patient's admission to an ETP.

The bill would require the FNAP to conduct a treatment placement meeting with specified individuals prior to the expiration of 90 days from the date of placement in the ETP to determine whether the patient may return to a standard treatment environment or the patient clinically requires continued ETP treatment. If the FNAP determines that the patient clinically requires continued ETP treatment, the bill would require the FNAP to certify the patient for further ETP treatment for one year, subject to FNAP reviews at least every 90 days, as specified. The bill would require the FNAP to conduct another treatment placement meeting prior to the expiration of the one-year certification of ETP placement to determine whether the patient may return to a standard treatment environment or be certified for further ETP treatment for another year. The bill would also require, if the FNAP determines that the patient requires continued ETP placement, that the patient's case be referred to a forensic psychiatrist or psychologist outside of the State Department of State Hospitals for independent review, that a hearing be conducted, and notice given, as specified.

The bill would require the State Department of State Hospitals to monitor the ETPs, evaluate outcomes, and report its findings and recommendations to the Legislature.

Because this bill would create a new crime, it imposes a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. (a) The Legislature finds and declares that the State Department of State Hospitals delivers inpatient mental health treatment to over 6,000 patients through more than 10,000

department employees. Their goal is to improve the lives of patients diagnosed with severe mental health conditions who have been assigned to their hospitals and units. In the experience of the department, there can be no effective clinical treatment without safety for its patients and employees, and no safety without effective clinical treatment.

(b) It is the intent of the Legislature in enacting this bill to expand the range of available clinical treatment by establishing pilot enhanced treatment programs (ETP) for those patients determined to be at high risk of most dangerous behavior against other patients or hospital staff. The goal of these pilot ETPs is to evaluate the effectiveness of concentrated, evidence-based clinical therapy and treatment in an environment designed to improve these patients' conditions and return them to the general patient population.

(c) The Legislature finds and declares that the purpose of the establishment of the pilot ETPs within the State Department of State Hospitals is to test the effectiveness of providing improved treatment with a heightened secure setting to patients with a demonstrated and sustained risk of aggressive, violent behavior toward other patients and staff.

(d) It is the intent of the Legislature that the criteria established for placement in an ETP within the State Department of State Hospitals cannot be used to circumvent the statutory and regulatory criteria for use of seclusion and restraints, as defined by Section 1180.1 of the Health and Safety Code, but is instead another level of continuum of care for the patient receiving treatment in an ETP.

SEC. 2. Section 1265.9 is added to the Health and Safety Code, to read:

1265.9. (a) On and after July 1, 2015, any acute psychiatric hospital that submits a completed application and is operated by the State Department of State Hospitals may be approved by the State Department of Public Health to offer, as a supplemental service, an Enhanced Treatment Program (ETP) that meets the requirements of this section, Section 4144 of the Welfare and Institutions Code, and applicable regulations.

(b) This section shall remain in effect for each pilot ETP until January 1 of the fifth calendar year after each pilot ETP site has admitted its first patient, and is repealed as of January 1 of the fifth calendar year after each pilot ETP site has admitted its first patient,

unless a later enacted statute extending the program is enacted prior to those dates. The State Department of State Hospitals shall post a declaration on its Internet Web site when the condition for repealing this section is met stating that this section is repealed.

(c) (1) Prior to the admission of the first patient into the last pilot ETP, the State Department of Public Health may adopt emergency regulations in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code) to implement this section. The adoption of an emergency regulation under this paragraph is deemed to address an emergency, for purposes of Sections 11346.1 and 11349.6 of the Government Code, and the State Department of Public Health is hereby exempted for this purpose from the requirements of subdivision (b) of Section 11346.1 of the Government Code.

(2) As an alternative to paragraph (1) and notwithstanding the rulemaking provisions of Administrative Procedures Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), the director of the State Department of Public Health may implement this section, in whole or in part, by means of an all facility letter or other similar instruction.

(d) An ETP shall meet all of the following requirements:

(1) Maintain a staff-to-patient ratio of one to five.

(2) Limit each room to one patient.

(3) Each patient room shall allow visual access by staff 24 hours per day.

(4) Each patient room shall have a toilet and sink in the room.

(5) Each patient room door shall have the capacity to be locked externally. The door may be locked when clinically indicated and determined to be the least restrictive treatment environment for the patient's care and treatment pursuant to Section 4144 of the Welfare and Institutions Code, but shall not be considered seclusion, as defined by subdivision (e) of Section 1180.1, for purposes of Division 1.5 (commencing with Section 1180).

(6) Provide emergency egress for ETP patients.

(7) In the event seclusion or restraints, as defined by Section 1180.1, are used in an ETP, all state licensing and regulations shall be followed.

(8) A full-time independent patients' rights advocate who provides patients' rights advocacy services shall be assigned to each ETP.

(e) The ETPs shall adopt and implement policies and procedures necessary to encourage patient improvement, recovery, and a return to a standard treatment environment, and to create identifiable facility requirements and bench marks. The policies and procedures shall also provide all of the following:

(1) Criteria and process for admission into an ETP pursuant to Section 4144 of the Welfare and Institutions Code.

(2) Clinical assessment and review focused on behavior, history, high risk of most dangerous behavior, and clinical need for patients to receive treatment in an ETP as the least restrictive treatment environment.

(3) A process for identifying an ETP along a continuum of care that will best meet the patient's needs, including least restrictive treatment environment.

(4) A process for creating and implementing a treatment plan with regular clinical review and reevaluation of placement back into a standard treatment environment and discharge and reintegration planning as specified in subdivision (e) of Section 4144 of the Welfare and Institutions Code.

(f) Patients who have been admitted to an ETP shall have the same rights guaranteed to patients not in an ETP with the exception set forth in paragraph (5) of subdivision (d).

(g) For purposes of paragraph (1) of subdivision (d), "staff" means licensed nurses and psychiatric technicians providing direct patient care.

SEC. 3. Section 4100 of the Welfare and Institutions Code is amended to read:

4100. The department has jurisdiction over the following hospitals:

(a) Atascadero State Hospital.

(b) Coalinga State Hospital.

(c) Metropolitan State Hospital.

(d) Napa State Hospital.

(e) Patton State Hospital.

(f) Any other State Department of State Hospitals facility subject to available funding by the Legislature.

SEC. 4. Section 4143 is added to the Welfare and Institutions Code, to read:

4143. Commencing July 1, 2015, and subject to available funding, the State Department of State Hospitals may establish and maintain pilot enhanced treatment programs (ETPs), as defined in Section 1265.9 of the Health and Safety Code, and evaluate the effectiveness of intensive, evidence-based clinical therapy and treatment of patients described in Section 4144.

SEC. 5. Section 4144 is added to the Welfare and Institutions Code, to read:

4144. (a) A state hospital psychiatrist or psychologist may refer a patient to a pilot enhanced treatment program (ETP), as defined in Section 1265.9 of the Health and Safety Code, for temporary placement and risk assessment upon determining that the patient may be at high risk of most dangerous behavior and when safe treatment is not possible in a standard treatment environment. The referral may occur after admission to the State Department of State Hospitals, and after sufficient and documented evaluation of violence risk of the patient, with notice to the patients' rights advocate at the time of the referral. A patient shall not be placed into an ETP as a means of punishment, coercion, convenience, or retaliation.

(b) Within three business days of placement in an ETP, a dedicated forensic evaluator, who is not on the patient's treatment team, shall complete an initial evaluation of the patient that shall include an interview of the patient's treatment team, an analysis of diagnosis, past violence, current level of risk, and the need for enhanced treatment.

(c) (1) Within seven business days of placement in an ETP and with 72-hour notice to the patient and patients' rights advocate, the forensic needs assessment panel (FNAP) shall conduct a placement evaluation meeting with the referring psychiatrist or psychologist, the patient and patients' rights advocate, and the dedicated forensic evaluator who performed the initial evaluation. A determination shall be made as to whether the patient clinically requires ETP treatment.

(2) (A) The threshold standard for treatment in an ETP is met if a psychiatrist or psychologist, utilizing standard forensic methodologies for clinically assessing violence risk, determines that a patient meets the definition of a patient at high risk of most

dangerous behavior and ETP treatment meets the identified needs of the patient and safe treatment is not possible in a standard treatment environment.

(B) Factors used to determine a patient's high risk of most dangerous behavior may include, but are not limited to, an analysis of past violence, delineation of static and dynamic violence risk factors, and utilization of valid and reliable violence risk assessment testing.

(3) If a patient has shown improvement during his or her placement in an ETP, the FNAP may delay its certification decision for another seven business days. The FNAP's determination of whether the patient will benefit from continued or longer term ETP placement and treatment shall be based on the threshold standard for treatment in an ETP specified in subparagraph (A) of paragraph (2).

(d) (1) The FNAP shall review all material presented at the FNAP placement evaluation meeting conducted under subdivision (c), and the FNAP shall either certify the patient for 90 days of treatment in an ETP or direct that the patient be returned to a standard treatment environment in the hospital.

(2) After the FNAP makes a decision to provide ETP treatment and if ETP treatment will be provided at a facility other than the current hospital, the transfer may take place as soon as transportation may reasonably be arranged, but no later than 30 days after the decision is made.

(3) The FNAP determination shall be in writing and provided to the patient and patients' rights advocate as soon as possible, but no later than three business days after the decision is made.

(e) (1) Upon admission to an ETP, a forensic needs assessment team (FNAT) psychologist who is not on the patient's multidisciplinary treatment team shall perform an in-depth violence risk assessment and make an individual treatment plan for the patient based on the assessment. The individual treatment plan shall:

(A) Be in writing and developed in collaboration with the patient, when possible. The initial treatment plan shall be developed as soon as possible, but no later than 72 hours following the patient's admission. The comprehensive treatment plan shall be developed following a complete violence risk assessment.

(B) Be based on a comprehensive assessment of the patient's physical, mental, emotional, and social needs, and focused on mitigation of violence risk factors.

(C) Be reviewed and updated no less than every 10 days.

(2) The individual treatment plan shall include, but is not limited to, all of the following:

(A) A statement of the patient's physical and mental condition, including all mental health and medical diagnoses.

(B) Prescribed medication, dosage, and frequency of administration.

(C) Specific goals of treatment with intervention and actions that identify steps toward reduction of violence risk and observable, measurable objectives.

(D) Identification of methods to be utilized, the frequency for conducting each treatment method, and the person, or persons, or discipline, or disciplines, responsible for each treatment method.

(E) Documentation of the success or failure in achieving stated objectives.

(F) Evaluation of the factors contributing to the patient's progress or lack of progress toward reduction of violence risk and a statement of the multidisciplinary treatment decision for followup action.

(G) An activity plan.

(H) A plan for other services needed by the patient, such as care for medical and physical ailments, which are not provided by the multidisciplinary treatment team.

(I) Discharge criteria and goals for an aftercare plan in a standard treatment environment and a plan for post-ETP discharge follow up.

(3) An ETP patient shall receive treatment from a multidisciplinary team consisting of a psychologist, a psychiatrist, a nurse, a psychiatric technician, a clinical social worker, a rehabilitation therapist, and any other necessary staff who shall meet as often as necessary, but no less than once a week, to assess the patient's response to treatment.

(4) The staff shall observe and note any changes in the patient's condition and the treatment plan shall be modified in response to the observed changes.

(5) Social work services shall be organized, directed, and supervised by a licensed clinical social worker.

(6) (A) Mental health treatment programs shall provide and conduct organized therapeutic social, recreational, and vocational activities in accordance with the interests, abilities, and needs of the patients, including the opportunity for exercise.

(B) Mental health rehabilitation therapy services shall be designed by and provided under the direction of a licensed mental health professional, a recreational therapist, or an occupational therapist.

(7) An aftercare plan for a standard treatment environment shall be developed.

(A) A written aftercare plan shall describe those services that should be provided to a patient following discharge, transfer, or release from an ETP for the purpose of enabling the patient to maintain stabilization or achieve an optimum level of functioning.

(B) Prior to or at the time of discharge, transfer, or release from an ETP, each patient shall be evaluated concerning the patient‘s need for aftercare services. This evaluation shall consider the patient’s potential housing, probable need for continued treatment and social services, and need for continued medical and mental health care.

(C) Aftercare plans shall include, but shall not be limited to, arrangements for medication administration and follow-up care.

(D) A member of the multidisciplinary treatment team designated by the clinical director shall be responsible for ensuring that the aftercare plan has been completed and documented in the patient‘s health record.

(E) The patient shall receive a copy of the aftercare plan when referred to a standard treatment environment.

(f) Prior to the expiration of 90 days from the date of placement in an ETP and with 72-hour notice provided to the patient and the patients’ rights advocate, the FNAP shall convene a treatment placement meeting with a psychologist from the treatment team, a patients’ rights advocate, the patient, and the FNAT psychologist who performed the in-depth violence risk assessment. The FNAP shall determine whether the patient may return to a standard treatment environment or whether the patient clinically requires continued treatment in an ETP. If the FNAP determines that the patient clinically requires continued ETP placement, the patient shall be certified for further ETP placement for one year. The FNAP determination shall be in writing and provided to the patient

and the patients' rights advocate within 24 hours of the meeting. If the FNAP determines that the patient is ready to be transferred to a standard treatment environment, the FNAP shall identify appropriate placement within a standard treatment environment in a state hospital, and transfer the patient within 30 days of the determination.

(g) If a patient has been certified for ETP treatment for one year pursuant to subdivision (f), the FNAP shall review the patient's treatment summary at least every 90 days to determine if the patient no longer clinically requires treatment in the ETP. This FNAP determination shall be in writing and provided to the patient and the patients' rights advocate within three business days of the meeting. If the FNAP determines that the patient no longer clinically requires treatment in the ETP, the FNAP shall identify appropriate placement, and transfer the patient within 30 days of the determination.

(h) Prior to the expiration of the one-year certification of ETP placement under subdivision (f), and with 72-hour notice provided to the patient and the patients' rights advocate, the FNAP shall convene a treatment placement meeting with the treatment team, the patients' rights advocate, the patient, and the FNAT psychologist who performed the in-depth violence risk assessment. The FNAP shall determine whether the patient clinically requires continued ETP treatment. The FNAP determination shall be in writing and provided to the patient and the patients' rights advocate within 24 hours of the meeting.

(i) If after the treatment placement meeting described in subdivision (h), and after discussion with the patient, the patients' rights advocate, patient's ETP team members, and review of documents and records, the FNAP determines that the patient clinically requires continued ETP placement, the patient's case shall be referred outside of the State Department of State Hospitals to a forensic psychiatrist or psychologist for an independent medical review for the purpose of assessing the patient's overall treatment plan and the need for ongoing ETP treatment. Notice of the referral shall be provided to the patient and the patients' rights advocate within 24 hours of the FNAP meeting as part of the FNAP determination. The notice shall include instructions for the patient to submit information to the forensic psychiatrist or psychologist conducting the independent medical review.

(1) The forensic psychiatrist or psychologist conducting the independent medical review shall be provided with the patient's medical and psychiatric documents and records, along with any additional information submitted by the patient, within five business days from the date of the FNAP's determination that the patient requires continued ETP placement.

(2) After reviewing the patient's medical and psychiatric documents and records, along with any additional information submitted by the patient, but no later than 14 days after the receipt of the patient's medical and psychiatric documents and records, the forensic psychiatrist or psychologist conducting the independent medical review shall provide the State Department of State Hospitals, the patient, and the patients' rights advocate with a written notice of the date and time for a hearing. At least one FNAP member is required to attend the hearing. The notice shall be provided at least 72 hours in advance of the hearing, shall include a statement that at least one FNAP member is required to attend the hearing, and advise the patient of his or her right to a hearing or to waive his or her right to a hearing. The notice shall also include a statement that the patient may have assistance of a patients' rights advocate or staff member at the hearing. Seventy-two-hour notice shall also be provided to any individuals whose presence is requested by the forensic psychiatrist or psychologist conducting the independent medical review in order to help assess the patient's overall treatment plan and the need for ongoing ETP treatment.

(3) If the patient waives his or her right to a hearing, the forensic psychiatrist or psychologist conducting the independent medical review shall make recommendations to the FNAP on whether or not the patient should be certified for ongoing ETP treatment.

(4) If the patient does not waive the right to a hearing, both of the following shall be provided:

(A) If the patient elects to have the assistance of a patients' rights advocate or a staff person, including the patients' rights advocate, the requested person shall provide assistance relating to the hearing, whether or not the patient is present at the hearing, unless the forensic psychiatrist or psychologist conducting the hearing finds good cause why the requested person should not participate. Good cause includes a reasonable concern for the safety of a staff member requested to be present at the hearing.

(B) An opportunity for the patient to present information, statements, or arguments, either orally or in writing, to show either that the information relied on for the FNAP's determination for ongoing treatment is erroneous, or any other relevant information.

(5) The conclusion reached by the forensic psychiatrist or psychologist who conducts the independent medical review shall be in writing and provided to the State Department of State Hospitals, the patient, and the patients' rights advocate within three business days of the conclusion of the hearing.

(6) If the forensic psychiatrist or psychologist who conducts the independent medical review concludes that the patient requires ongoing ETP treatment, the patient shall be certified for further treatment for an additional year.

(7) If the forensic psychiatrist or psychologist who conducts the independent medical review determines that the patient no longer requires ongoing ETP treatment, the FNAP shall identify appropriate placement and transfer the patient within 30 days of determination.

(j) At any point during the ETP placement, if a patient's treatment team determines that the patient no longer clinically requires ETP treatment, a recommendation to transfer the patient out of the ETP shall be made to the FNAT or FNAP.

(k) The process described in this section may continue until the patient no longer clinically requires ETP treatment or until the patient is discharged from the State Department of State Hospitals.

(*l*) As used in this section, the following terms have the following meanings:

(1) "Enhanced treatment program" or "ETP" means a supplemental treatment unit as defined in Section 1265.9 of the Health and Safety Code.

(2) "Forensic needs assessment panel" or "FNAP" means a panel that consists of a psychiatrist, a psychologist, and the medical director of the hospital or facility, none of whom are involved in the patient's treatment or diagnosis at the time of the hearing or placement meetings.

(3) "Forensic needs assessment team" or "FNAT" means a panel of psychologists with expertise in forensic assessment or violence risk assessment, each of whom are assigned an ETP case or group of cases.

(4) “In-depth violence risk assessment” means the utilization of standard forensic methodologies for clinically assessing the risk of a patient posing a substantial risk of inpatient aggression.

(5) “Patients’ rights advocate” means the advocate contracted under Sections 5370.2 and 5510.

(6) “Patient at high risk of most dangerous behavior” means the individual has a history of physical violence and currently poses a demonstrated danger of inflicting substantial physical harm upon others in an inpatient setting, as determined by an evidence-based, in-depth violence risk assessment conducted by the State Department of State Hospitals.

(m) The State Department of State Hospitals may adopt emergency regulations in accordance with the Administrative Procedures Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code) to implement the treatment components of this section. The adoption of an emergency regulation under this paragraph is deemed to address an emergency, for purposes of Sections 11346.1 and 11349.6 of the Government Code, and the State Department of State Hospitals is hereby exempted for this purpose from the requirements of subdivision (b) of Section 11346.1 of the Government Code.

SEC. 6. Section 4145 is added to the Welfare and Institutions Code, to read:

4145. (a) The State Department of State Hospitals shall monitor the pilot enhanced treatment programs (ETP), evaluate outcomes, and report on its findings and recommendations. This report shall be provided to the fiscal and policy committees of the Legislature annually, beginning on January 10 of the first year after which the first ETP is opened and services have commenced, and shall be in compliance with Section 9795 of the Government Code. The evaluation shall include, but is not limited to, all of the following:

(1) Comparative summary information regarding the characteristics of the patients served.

(2) Compliance with staffing requirements.

(3) Staff classification to patient ratio.

(4) Average monthly occupancy.

(5) Average length of stay.

(6) The number of residents whose length of stay exceeds 90 days.

(7) The number of patients with multiple stays.

(8) The number of patients whose discharge was delayed due to lack of available beds in a standard treatment environment.

(9) Restraint and seclusion use, including the number of incidents and duration, consistent with paragraph (3) of subdivision (d) of Section 1180.2 of the Health and Safety Code.

(10) Serious injuries to staff and residents.

(11) Serious injuries to staff and residents related to the use of seclusion and restraints as defined under Section 1180 of the Health and Safety Code.

(12) Staff turnover.

(13) The number of patients' rights complaints, including the subject of the complaint and its resolution.

(14) Type and number of training provided for ETP staff.

(15) Staffing levels for ETPs.

(b) The State Department of State Hospitals' reporting requirements under Section 4023 of the Welfare and Institutions Code, shall apply to the ETPs.

SEC. 7. Section 7200 of the Welfare and Institutions Code is amended to read:

7200. There are in the state the following state hospitals for the care, treatment, and education of the mentally disordered:

(a) Metropolitan State Hospital near the City of Norwalk, Los Angeles County.

(b) Atascadero State Hospital near the City of Atascadero, San Luis Obispo County.

(c) Napa State Hospital near the City of Napa, Napa County.

(d) Patton State Hospital near the City of San Bernardino, San Bernardino County.

(e) Coalinga State Hospital near the City of Coalinga, Fresno County.

(f) Any other State Department of State Hospitals facility subject to available funding by the Legislature.

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty

for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2014

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Governor